

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

Criminal Action No. 5:17CR15
(STAMP)

CORY LETROIT JOSEPH RIGGS,

Defendant.

MEMORANDUM OPINION AND ORDER
AFFIRMING AND ADOPTING REPORT AND
RECOMMENDATION OF MAGISTRATE JUDGE AND
DENYING THE DEFENDANT'S MOTION TO SUPPRESS

The defendant was named in a one-count indictment with a forfeiture allegation in the above-styled criminal action. The indictment charges the defendant with unlawful possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). Counsel for the defendant filed a motion to suppress evidence and statements (ECF No. 17). The government then filed a response in opposition (ECF No. 18) to defendant's motion to suppress.

United States Magistrate Judge James E. Seibert held a hearing on the motions to suppress on September 5, 2017. After the evidentiary hearing, the magistrate judge then entered a report and recommendation recommending that the motion to suppress be denied. ECF No. 21. The magistrate judge was unpersuaded by the defendant's argument, finding that the defendant is a convicted felon and therefore prohibited from possessing a firearm. The

defendant did not file any objections within 14 days after being served with a copy of the report and recommendation.

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court must conduct a de novo review of any portion of the magistrate judge's recommendation to which objection is timely made. Because no objections were filed, all findings and recommendations will be upheld unless they are "clearly erroneous or contrary to law." 28 U.S.C. § 636(b)(1)(A). As the Supreme Court of the United States stated in United States v. United States Gypsum Co., "a finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." 333 U.S. 364, 395 (1948).

Accordingly, after reviewing the report and recommendation under the clearly erroneous standard of review, this Court is not left with a "definite and firm conviction that a mistake has been committed." United States Gypsum Co., 333 U.S. at 395. Accordingly, the magistrate judge's report and recommendation is affirmed and adopted and the defendant's motion to suppress (ECF No. 17) is hereby DENIED.

Additionally, because no party filed objections to the report and recommendation, the defendant waived his right to appeal a judgment of this Court based thereon and the defendant's plea

agreement is not conditional on the ruling on the motions to suppress. Thomas v. Arn, 474 U.S. 140, 148-53 (1985).

IT IS SO ORDERED.

The Clerk is DIRECTED to transmit copies of this memorandum opinion and order to counsel of record herein, to the defendant, to the United States Probation Office, and to the United States Marshals Service.

DATED: September 22, 2017

/s/ Frederick P. Stamp, Jr.
FREDERICK P. STAMP, JR.
UNITED STATES DISTRICT JUDGE